

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BRENT WAYNE ECKERT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13540
Trial Court No. 3KN-15-01863 CR

SUMMARY DISPOSITION

No. 0302 — January 11, 2023

Appeal from the Superior Court, Third Judicial District, Kenai,
Sharon Illsley, Charles T. Huguelet and Jason M. Gist, Judges.

Appearances: Marjorie A. Mock, Attorney at Law, under
contract with the Public Defender Agency, and Samantha
Cherot, Public Defender, Anchorage, for the Appellant.
Madison M. Mitchell, Assistant Attorney General, Office of
Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney
General, Juneau, for the Appellee.

Before: Wollenberg, Harbison, and Terrell, Judges.

Brent Wayne Eckert was convicted of one count of second-degree
misconduct involving a controlled substance, one count of conspiracy to commit second-
degree misconduct involving a controlled substance, and one count of violating

conditions of release in a prior felony case based on his role in shipping heroin from California to Nikiski, Alaska.¹

Eckert now appeals, arguing that the superior court erred by failing to suppress evidence found during the execution of a search warrant for a cabin that he resided in and the adjacent residence where his sister lived.

Eckert makes two arguments attacking the search warrant. First, Eckert argues that the affidavits did not establish probable cause to search the cabin or the house, because neither residence was closely linked with his criminal activities. Second, Eckert argues that the warrant was based on observations made from within the cabin's curtilage, in violation of *Florida v. Jardines* and *Kelley v. State*.² Because we find that there was probable cause to issue a search warrant for both residences without relying on any of the officers' observations from within the area Eckert claims constitutes his curtilage, we affirm the judgment of the superior court without reaching Eckert's second claim.

Probable cause to issue a search warrant exists when "reliable information is set forth in sufficient detail to warrant a reasonably prudent [person] in believing" that evidence of criminal activity will be found at the location to be searched.³

In this case, law enforcement officers discovered thirty-seven grams of heroin hidden in a package addressed to Eckert at a post office box registered to his

¹ AS 11.71.020(a)(1), AS 11.71.020(a)(1) & AS 11.31.120(a), and AS 11.56.757(b)(1), respectively.

² *Florida v. Jardines*, 569 U.S. 1 (2013); *Kelley v. State*, 347 P.3d 1012 (Alaska App. 2015).

³ *See Lustig v. State*, 36 P.3d 731, 733 (Alaska App. 2001) (citations omitted).

sister. They placed a tracking device inside the package after obtaining a warrant.⁴ Officers observed Eckert pick up the package from the post office, transfer it to another person in a different vehicle, and then drive to a property in a rural area which was adjacent to the property containing his sister's house. Officers saw Eckert leave his truck parked in the driveway on this property and walk up the driveway and out of sight. Mere hours later, officers tracked the package to the same driveway where Eckert's truck had previously been parked (he had since left the property).⁵ The package was discovered in the trunk of an occupied car.

Both the cabin and the house were accessed via driveways off of the same road (even though their addresses were listed as being on separate streets). In fact, the two properties were last registered to a deceased woman who shared Eckert's last name, and Eckert had recently listed his sister's house as his residence in a court filing.

Based on these facts, we conclude that there was probable cause to search the two residences.⁶

The judgment of the superior court is AFFIRMED.

⁴ The package came to the attention of a federal postal inspector, who through investigation found indicators of drug trafficking and subjected the package to a canine sniff. The dog alerted on the package, and the inspector obtained a search warrant from a federal magistrate judge authorizing the opening of the package. The matter was then turned over to local law enforcement, who obtained a warrant to install a tracker in the package as well as a device that would alert them if the package was opened. Eckert does not challenge this warrant on appeal.

⁵ The officers subsequently learned of the address to this property from searching Kenai Peninsula Borough property records.

⁶ See *State v. Koen*, 152 P.3d 1148, 1151 (Alaska 2007) (explaining that appellate review of warrants "focuses on whether the magistrate had a substantial basis to conclude that probable cause to search existed").